

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

EDDIE JIM MORRISON,

Plaintiff,

v.

THE KROGER COMPANY, INC., an  
Ohio corporation, d/b/a FRED MEYER,

Defendant.

CASE NO. C09-5183BHS

ORDER DENYING  
PLAINTIFF'S MOTION FOR  
RECONSIDERATION

This matter comes before the Court on Plaintiff's Motion for Reconsideration (Dkt. 30). The Court has considered the pleadings filed in support of the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On March 3, 2009, Plaintiff Eddie Jim Morrison filed a complaint against Defendant The Kroger Company, Inc., in the Superior Court of Washington in and for the County of Pierce. Dkt. 1, Exh. 2. Plaintiff alleges that (1) he was terminated by Defendant in retaliation for reporting safety violations and (2) he suffered various injuries while working for Defendant. *Id.*

On April 1, 2009, Defendant removed the matter to this Court. Dkt. 1.

1 On January 15, 2010, Defendant filed a motion for summary judgment. Dkt. 17.  
2 Plaintiff did not respond. On February 12, 2010, Defendant filed a reply brief. Dkt. 24.  
3 On February 19, 2010, Plaintiff filed an Exhibit R. Dkt. 25. On February 25, 2010,  
4 Plaintiff filed Exhibits S, T, U, & V. Dkt. 26. These exhibits mainly deal with discovery  
5 matters between Plaintiff and Defendant's counsel.

6 On March 12, 2010, the Court granted Defendant's motion because Plaintiff failed  
7 to meet his burden of proof on his Title VII retaliation claim, Plaintiff's claim under the  
8 Washington Industrial Safety and Health Act was time barred, and, under Washington  
9 law, Plaintiff could not sue his employer for his alleged on-the-job injuries. Dkt. 28.

10 On March 18, 2010, Plaintiff filed a Motion for Reconsideration. Dkt. 30.

## 11 **II. FACTUAL BACKGROUND**

12 Plaintiff was an employee of Fred Meyer at its Puyallup Grocery Distribution  
13 Center ("Distribution Center") from October 11, 1999 until June 5, 2008. Dkt. 18,  
14 Declaration of Thomas Potter ("Potter Decl."), ¶ 2.

15 On or about April 2, 2008, Plaintiff was involved in a collision with another  
16 employee at the Distribution Center while working on the floor. *Id.* ¶ 3. Defendant  
17 claims that the collision could have been avoided and therefore issued Plaintiff and the  
18 other employee written warnings. *Id.* Plaintiff filed a written grievance with his union  
19 regarding the issuance of the warning. *Id.*

20 Defendant claims that, in addition to the grievance, Plaintiff began sending  
21 threatening emails to employees at Fred Meyer's main office in Portland, Oregon,  
22 demanding large sums of money in exchange for his silence regarding alleged safety  
23 issues. *Id.* ¶ 4; *id.*, Exh. 2 (email). For example, on May 18, 2008, Plaintiff promised he  
24 would refrain from contacting any regulatory agency regarding undisclosed safety  
25 violations in exchange for a "\$3 million dollar severance." Dkt. 19, Declaration of Chris  
26 Weinans ("Weinans Decl."), Exh. 8.

1 In late May 2008, Plaintiff's emails were given to Carl Wojciechowski, Group  
2 Vice President of Human Resources for Fred Meyer Stores, Inc. Dkt. 20, Declaration of  
3 Carl Wojciechowski, ¶ 2. Mr. Wojciechowski claims that he reviewed the emails and  
4 concluded that "Plaintiff's email demands were dishonest and tantamount to attempted  
5 extortion." *Id.* ¶ 4. Mr. Wojciechowski decided that Plaintiff's conduct violated  
6 company policies, and drafted a termination letter for Plaintiff's manager to sign and  
7 deliver to Plaintiff. *Id.* ¶¶ 4-5.

8 After Plaintiff was terminated, he filed a complaint with the Washington  
9 Department of Labor and Industries. Weinans Decl., Exh. 10. The Department  
10 conducted a preliminary investigation of Plaintiff's complaint and determined that there  
11 were not sufficient facts to take action on Plaintiff's behalf. *Id.*

### 12 III. DISCUSSION

13 Motions for reconsideration are governed by Local Rule CR 7(h), which provides  
14 as follows:

15 Motions for reconsideration are disfavored. The court will ordinarily deny  
16 such motions in the absence of a showing of manifest error in the prior  
17 ruling or a showing of new facts or legal authority which could not have  
been brought to its attention earlier with reasonable diligence.

18 Local Rule CR 7(h)(1).

19 In this case, Plaintiff appears to argue that the Court committed manifest error in  
20 the prior ruling because he has not submitted any new facts or legal authority in his  
21 motion. *See* Dkt. 30. First, Plaintiff argues that this is the improper venue for this action.  
22 *Id.* at 1-2. This Court, however, is the proper venue for this action because the allegations  
23 occurred in Puyallup, Washington.

24 Second, Plaintiff argues that his termination was wrongful because "a criminal  
25 conviction can never be" supported based on his demands for large sums of money from  
26 his employer. Dkt. 30 at 2-3. Defendant, however, only had the burden of showing that  
27 Plaintiff's termination was for a legitimate reason. *See* Dkt. 28 at 4-5. Defendant met  
28 that burden and was entitled to summary judgment as a matter of law. *Id.*

1 Third, Plaintiff argues that Defendant should not have issued him a written  
2 warning because the accident that led to the warning could not have been avoided. Dkt.  
3 30 at 6-7. This argument is irrelevant because, even if the accident could have been  
4 avoided, Plaintiff's claims for relief would still be futile.

5 Finally, the remainder of Plaintiff's motion consists of unsupported allegations of  
6 ongoing safety violations at Defendant's warehouse and irrelevant arguments regarding  
7 discovery issues. These issue are wholly without merit.

8 Therefore, the Court denies Plaintiff's motion for reconsideration because he has  
9 failed to make a showing of manifest error in the Court's prior ruling.

10 **IV. ORDER**

11 Therefore, it is hereby

12 **ORDERED** that Plaintiff's Motion for Reconsideration (Dkt. 30) is **DENIED**.

13 DATED this 24<sup>th</sup> day of March, 2010.

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15 BENJAMIN H. SETTLE  
16 United States District Judge  
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